IN THE

Supreme Court of the United States

OCTOBER TERM 1976

NO. 76-362

C. ELLIS QUARLES, *Jr.*,
Petitioner,

vs.

SARAH B. QUARLES,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

C. ELLIS QUARLES, *JR.*,

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No.

C. ELLIS QUARLES, *Jr.*,

Petitioner,

v.

SARAH B. QUARLES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner, C. Ellis Quarles, Jr., prays that a writ of certiorari issue to review the decision or judgment of the District of Columbia Court of Appeals entered, March 12, 1976.

OPINIONS BELOW

The decision of the District of Columbia Court of Appeals is unofficially reported at 353 Atlantic 2d 285 (1976); petition for rehearing denied April 13, 1976. Chief Justice Burger extended the time within which petitioner may file his petition until September 10, 1976. The judgment or decision or order of the Superior Court of the District of Columbia, Family Division is printed at page 8a, Appendix, and the decision of the District of Columbia Court of Appeals is printed in the Appendix at page 1a.

JURISDICTION

The decision or judgment of the District of Columbia Court of Appeals was entered March 12, 1976, and an order denying Petition for rehearing entered April 13, 1976. This Court, Supreme Court of the United States [Chief Justice Burger] granted leave to file this Petition for writ of certiorari until September 10, 1976.

Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, section 1257, as amended July 29, 1970, Public Law 91-358, Title I, Section 172(a) (1), 84 Stat. 590.

QUESTIONS PRESENTED

Whether or not a court in one state [District of Columbia Superior Court, Family Division] has power or jurisdiction to directly or indirectly affect the title of land, or grant an in rem decree with respect to real property located in another state, notwithstanding the forum court has personam jurisdiction of both parties?

or

Whether or not the trial court's in personam jurisdiction over the parties confers jurisdiction to transfer title to real property, to the respondent, both properties, which were located outside the District of Columbia?

FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

> "No person shall ... be deprived of life liberty, or property, without due process of law; ..."

STATUTES INVOLVED

84 Statutes 488 — D.C. Code 1973, Section 11-1101 (8); The Family Division of the Superior Court shall be assigned, in accordance with Chapter 9, exclusive jurisdiction of — "(8) determinations and adjudications of property rights, both real and personal, in any action referred to in this subsection, irrespective of any jurisdictional limitation imposed on the Superior Court."

STATEMENT OF THE CASE

Petitioner, C. Ellis Quarles, Jr., left the family's Wheaton, Maryland home in 1969. Petitioner moved to the District of Columbia and in August 1973, filed an action for absolute divorce on the ground of voluntary separation. Subsequent to trial, the trial court on April 4, 1974, granted petitioner an absolute divorce and sole ownership of ½ of the couple's real property situated in Louisa County, Commonwealth of Virginia. By the same order, respondent, Sara B. Quarles, was granted custody of the parties' two minor children, unreasonable attorney fees of $2,500, and sole ownership of the Wheaton, Maryland real property and a one-half interest in the Louisa County, Commonwealth of Virginia, real property. Petitioner's attempted appeal of the foregoing order was adjudicated as untimely, even though it be, the trial court failed to comply with the provisions of 54(b), FRCP, which has been adopted by the Superior Court, Civil Division, District of Columbia. Annotation: 38 ALR 2d 377. The trial court failed to make an express determination that there is no just reason for delay, where multiple claims are considered. See generally, 2 ALR Fed 545, and 10 ALR Fed 709.

The trial court in considering the multiple claims made no immediate provision for child support but held the child support issue in abeyance, without making a determination of finality as to the other issues as required by Rule 54 (b); Pending the reference, which was objected to, to an Auditor-master for findings of fact pertaining to the petitioner's ability to pay an award. The Auditor-master made no findings of fact pursuant to the reference, but reviewed and relied upon the findings of the Deputy Auditor-master, which was adopted by the trial court, which was objected to by petitioner. The appellate court enunciated that "a comprehensive report was filed in which the Auditor reviewed the evidence and concluded that petitioner had a fluctuating net business income in the "minimum range" of $18,000 to $25,000 annually, which was not supported by the evidence.

On or about August 23, 1974, the trial court entered an order directing petitioner pay an award of $500 monthly for the support of the parties' two minor children, which was objected to. Upon motions filed by respondent and oppositions thereto by petitioner, the trial court entered two additional orders on September 27, 1974, one order increased the award of attorney fees to $2,500 [not itemized]. The other order which is the subject-matter of this petition reads in pertinent part — printed in Appendix, at page 8a:

> ORDERED, that the plaintiff, C. Ellis Quarles Jr., be, and he is hereby directed, forthwith, to execute such deeds as are necessary for him to convey to the defendant, Sarah B. Quarles, his interest in and to the improved real estate

located at 3912 Elby Street, Wheaton, Silver Spring, Maryland ...

FURTHER ORDERED, that the plaintiff, C. Ellis Quarles, Jr., be, and he is hereby directed, forthwith, to execute such deeds, and documents as are necessary, for him to cause to be conveyed to the defendant, Sarah B. Quarles ...

See generally — *Fall* v. *Fall,* 75 Neb 120, 113 NW 175, affirmed *Fall* v. *Eastin,* 215 US 1, 54 L Ed 65 (1909).

REASON FOR GRANTING THE WRIT

I. The Court below has decided a federal question of substance in a way probably not in accord with applicable decisions of this court.

The history of divorce legislation and litigation manifests that divorce has never been considered to be a simple, transitory action in personam. Traditionally, every state, territory and the District of Columbia has an interest in, and exercises jurisdication over, marital status to promote the general welfare of its people. The state has an interest both in the formation and the dissolution of a marriage. Marriage is the foundation of the family and of society. As a consequence thereof, every state as a sovereign has a rightful and legitimate concern in the marital status of the persons who are domiciled therein. *Andrews* vs. *Andrews,* 188 US 14, 23 S. Ct. 237, 47 L Ed 366 (1903). See *Estin* v. *Estin,* supra. See generally, R, Leflar, American Conflicts of Law section 223 (1968).

If a state has sufficient contacts with the subject matter and the parties, it may properly act. *International Shoe Co.* v. *Washington,* 326, US 310, 66 S. Ct. 154, 90 L Ed 95 (1945). Unless suitable contacts do exist, the state may not constitutionally act. *Hanson* v. *Denkla,* 357 US 235, 78 S. Ct. 1228, 2 L Ed 2d 1283 (1958). To pursue analysis of the interest and contacts, petitioner focuses precisely on the issues in the case at bar.

The very nature of marriage is such that not only is status involved, but also a number of personal rights, duties, and obligations must be determined. Welfare of the children and support obligations provide substantial questions in many divorce proceedings. Jurisdiction to grant a divorce does not automatically include the right to resolve all financial issues between the parties to the marriage. *Vanderbilt* vs. *Vanderbilt,* 354 US 416, 77 S. Ct. 1360, 1 L Ed. 2d 1456 (1957); *Estin* vs. *Estin,* 334 US 541, 68 S. Ct. 1213, 92 L Ed 1561 (1948).

In order for a decree to be entitled to extraterritorial effect, for example, on the basis of full faith and credit or comity, it is generally necessary that the court, the Superior Court of the District of Columbia, which rendered the decree had the power to do so. *Williams* v. *North Carolina,* 325 US 226, 89 L Ed 1577, 65 S Ct. 1092, 157 ALR 1366, reh den 325 US 895 (1945). The

full faith and credit clause of the Federal Constitution does not afford ground for sustaining a decree which assumes to affect directly foreign lands. *Fall* v. *Fall,* 75 Neb 120, 113 N.W. 175, affirmed *Fall* v. *Eastin,* 215 US 1, 54 L Ed 65 (1909).

As a general rule, a court of equity may grant relief affecting land in another state if such grant of relief can be accomplished by means of a decree in personam, enforceable by injunction, attachment, or other process, such as contempt, provided the question in controversy does not relate directly to the title to or possession of the land. See *annotations:* 113 ALR 940; and 34 ALR 3 d 962. In the case at bar, the trial court attempts to convey real property, notwithstanding the appellate court's assertion to the contrary —

> "Although the April decree was ineffective to accomplish a transfer of title to the appellee by its own force since both properties were located outside the District of Columbia***"

II. Misapplication Of Rule 54 (b) FRCP

The appellate court in discussing the finality of multiple claims asserts — at page 288, 353 Atlantic 2d 285 (1976):

> "[5] *** Although the trial court left the determination of child support open to await a further hearing and findings by the Auditor concerning the extent of appellant's ability to pay an award, the pendency of that determination did not impair the finality of the judgment on the other issues or extend the time allowed for appeal."

Rule 54(b) requires that two steps be taken by the trial court before a final judgment may be entered upon one or more but less than all of the claims in the action. The trial court failed — (1) make an express determination that there is no just reason for delay; and (2) expressly direct the entry of judgment upon one or more of such claims. The Rule expressly provides that where

these two steps are not taken, the judgment is not final. See genrally —
ANNOTATIONS: 38 ALR 2d 377, and Later Case Service; 2 ALR *Fed* 545, and 10 ALR *Fed 709.*

CONCLUSION

For the foregoing reasons, the writ should be granted, and summarily remanded with instructions to grant a new trial.

Respectfully submitted,

C. Ellis Quarles, Jr.
2318 Ontario Rd., N.W.
Washington, D.C. 20009

APPENDIX:

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 9009, 9071, 9078

C. ELLIS QUARLES, JR., APPELLANT,

v.

SARAH B. QUARLES, APPELLEE.

Appeal from the Superior Court of the District of Columbia

(Argued October 14, 1975 Decided March 12, 1976)

Guy M. Bayes for appellant.

Harold F. Golding for appellee.

Before KERN, NEBEKER and YEAGLEY, *Associate Judges.*

PER CURIAM: We review here three orders entered by the Superior Court following the trial of a divorce action. Appellant-husband contends (1) that the orders directing him to pay child support of $500 monthly and raising the attorney fees payable to the appellee from $1,500 to $2,500 constituted abuses of the trial court's discretion; and (2) that the trial court improperly granted appellee's request for an order requiring him to transfer all of his rights and interest to the family homesite in Wheaton, Maryland, and to convey a one-half interest in a tract located in Louisa County, Virginia.

both held by the parties as tenants by the entirety during their second marriage.[1] We affirm.

Appellant, C. Ellis Quarles, left the family's Wheaton home in 1969. He moved to the District of Columbia and in August 1973, filed an action for absolute divorce on the ground of voluntary separation. Following the trial, the trial court, on April 4, 1974, granted appellant an absolute divorce and sole ownership of one-half of the Virginia property. By the same order appellee, Sarah B. Quarles, was granted custody of the parties' two minor children,[2] attorney fees of $1,500,[3] and sole ownership of the Wheaton property and a one-half interest in the Virginia tract. Appellant's attempted appeal of the order was dismissed because of his failure to file the notice within the time prescribed by the rules of this court.[4]

The court made no immediate provision for child support but held the matter in abeyance pending a referral to an Auditor-Master for findings concerning appellant's ability to pay an award. Following four days of hearings before a Deputy Auditor-Master, a comprehensive report was filed in which the Auditor reviewed the evidence and concluded that the appellant had a fluctuating net business income in the "minimum range" of $18,000 to $25,000 annually. The trial court adopted

[1] The parties were married a second time in September 1960.

[2] The parties' eldest daughter, born during their first marriage, had reached her majority prior to trial.

[3] The court explicitly stated in its order that the award of attorney fees was entered without prejudice to a claim by appellee for such further legal fees as she might incur in the subsequent proceedings before the Auditor-Master.

[4] *Quarles v. Quarles*, No. 8629 (D.C.App., August 29, 1974).

the report and, on August 23, 1974, entered an order directing that appellant pay an award of $500 monthly for the support of the parties' two minor children. Upon motions filed by the appellee, the court entered two additional orders on September 27, 1974, one raising the award of attorney fees to $2,500 to compensate appellee for her expenses before the Auditor, the other requiring appellant to execute the instruments necessary to effect the disposition of the parties' jointly held property decreed by the court in its order of April 4. Appellant's timely appeals of the three orders were consolidated for purposes of this review.

Appellant premises his attack on the awards primarily on his contention that the finding regarding his income made by the Auditor and adopted by the trial court is not supported by the record and that, as a consequence, the figures set for child support and appellee's attorney fees exceeded the court's discretion.

Appellant is a businessman of long experience who, for a number of years, has operated an employment agency and a real estate enterprise engaged in the purchase, renovation and rental of housing properties. Although he characterized himself as a man of meager circumstances, a claim not uncommon in actions of this kind, the evidence produced by the parties tended to show that his financial condition was considerably less precarious than his own description suggested. Specifically, the evidence indicated, and the Auditor so found, that he had real estate holdings outside the District of a net value in excess of $50,000;[5] that he had an indeter-

[5] The Auditor determined the $50,000 figure to be the combined total of appellant's own interest in the various properties with which he was associated outside the District of

minate interest in four properties located within the District of a total assessed value of approximately $23,000;[6] and that the income flowing through his business accounts had averaged $3,000 monthly in the period from January 1971, to May 1974.[7]

It is beyond the province of our review to substitute our own interpretation of the evidence for that reached by the primary finder of fact. Our review here is instead limited to a determination of whether, in light of the entire record, the Auditor's findings as approved by the trial court are so incongruent with the evidence as to be "plainly wrong or without evidence to support" them.[8] We find no such variance. To the contrary, we agree with the trial court that the report filed by the Auditor represented the product of a diligent attempt to disentangle appellant's confused business interests, and arrive at the best estimate of his annual income the record allowed. The findings are supported by the evidence.

Columbia excluding the family's home in Wheaton, Maryland. The figure includes appellant's proportionate share in two properties in which he had only a partial interest.

[6] The "assessed value" of real property within the District is set by the local authorities for purposes of taxation at a value approximately 60% of the property's estimated market value.

[7] Appellant claimed that he had transferred a substantial portion of his interest in both the real estate operation and employment agency to his business partner, now wife, Leola Smith, but was unable to produce satisfactory documentation of the alleged transfers or produce adequate evidence to demonstrate conclusively that actual consideration for the claimed transfers had in fact exchanged hands.

[8] D.C. Code 1973, § 17-305(a); Super. Ct. Dom. Rel. R. 52(a), 53(e)(2).

Having determined that the Auditor's estimate of appellant's income was not improperly adopted by the trial court and noting that the appellee, who was charged with the care of the parties' two minor children, was found at the time of trial to have a net annual income of only $6,500,[9] we conclude that the award of $500 monthly for child support was not so excessive as to constitute an abuse of discretion. We reach a similar conclusion with respect to the award of attorney fees. By its order of April 4, 1974, the trial court set the award at $1,500 but specifically stated within the text of that decree that it was entering the award without prejudice to a future claim by the appellee for the legal expenses she might incur in subsequent proceedings. The raise from $1,500 to $2,500 was considerable but in view of the length of the Auditor's hearings and of the preparation required of appellee's counsel to participate effectively in the dissection of appellant's business affairs, it was not so large as to compel upset on appeal.

Finally, we find no error in the trial court's order of September 27, 1974, directing appellant to execute deeds to the appellee for the parties' jointly held property. It was a reasonable solution and properly within the exercise of the trial court's in personam jurisdiction over the parties. *Bondurant v. Bondurant*, D.C.App., 283 A.2d 26 (1973); *Argent v. Argent*, 130 U.S.App.D.C. 46, 396 F.2d 695 (1968). Although the April decree was ineffective to accomplish a transfer of title to the appellee by its own force since both properties were located outside the District of Columbia,[10] it was effec-

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[9] At the time of trial, appellee was earning a gross salary as a telephone operator of $11,175 annually.

[10] *Bondurant v. Bondurant, supra; Argent v. Argent, supra.*

tive as a determination of property rights as between the parties. D.C. Code 1973, § 11-1101(8).

The decree of April 4, 1974, insofar as it concerned the disposition of property and the divorce itself, was a "final order" subject to review on appeal within the customary period of limitation set out in the rules of this court.[11] Although the trial court left the determination of child support open to await a further hearing and findings by the Auditor concerning the extent of appellant's ability to pay an award, the pendency of that determination did not impair the finality of the judgment on the other issues or extend the time allowed for appeal. *Cf. Guerrero v. Shafritz*, D.C.App., 206 A.2d 262 (1965); *Klever v. Seawall*, 65 F. 373 (6th Cir. 1894); *Gross Income Tax Division v. National Bank & Trust Co.*, 226 Ind. 293, 79 N.E.2d 651 (1948); *Ohio Nat. Life Ins. Co. v. Struble*, 80 Ohio App. 531, 76 N.E.2d 420 (1947); *Squire v. Guardian Trust Co.*, 47 Ohio L. Abs. 309, 72 N.E.2d 134 (1946). The resolution of those issues became final when, after 30 days the time for appeal expired and that judgment became the law of the case.[12]

Appellant argues, without merit, that the trial court lacked jurisdiction to grant appellee's motion to compel him to deliver deeds to the out-of-state parcels because the motion was not filed until September 4, 1974. The motion did not, as appellant erroneously contends, seek a modification of the April decree but sought only to

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[11] *See* D.C.App. R. 4.

[12] Finding that the real property portion of the April decree was a "final order", we need not reach the effect of D.C. Code 1973, § 11-721(a)(2)(C), which permits review of an interlocutory order "changing or affecting the possession of land."

implement a portion of its mandate. Super. Ct. Dom. Rel. R. 59(e) regarding motions to alter or amend a judgment was inapplicable and it is of no consequence that appellee did not comply with the requirement of that rule that such a motion be filed within ten days after the decree is entered.

As we find no error in the resolution of the issues discussed above and no merit in the other contentions raised by appellant, the three orders challenged in this appeal are hereby

Affirmed.

ORDER DIRECTING PLANTIFF TO EXECUTE DEEDS TO CONVEY REAL ESTATE AWARDED DEFENDANT BY ORDER OF COURT

Upon consideration of the motion for order directing plaintiff to execute deeds to convey real estate awarded defendant by order of Court filed herein by the defendant Sarah B. Quarles, and a timely objection or opposition thereto having been filed and considered herein, it is, by the Court, this 27th day of September, 1974.

ORDERED, that the plaintiff, C. Ellis Quarles, Jr., be and he is hereby directed, forthwith, to execute such deeds as are necessary for him to convey to the defendant, Sarah B. Quarles, his interest in and to the improved real estate located at 3912 Elby Street, Wheaton, Silver Spring, Maryland, that he and defendant owned as tenants by the entirety; and it is,

FURTHER ORDERED, that the plaintiff, C. Ellis Quarles, Jr., be, and he is hereby directed, forthwith, to execute such deeds and documents as are necessary, for him to cause to be conveyed to the defendant, Sarah B. Quarles, her one-half interest in and to the unimproved real estate located in Louisa County, Virginia, that he and the defendant own as tenants by the entirety.

Joseph M.F. Ryan